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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,732	06/09/2005	James Nabors	70065	6067
26748	7590	07/08/2009	EXAMINER	
SYNGENTA CROP PROTECTION, INC. PATENT AND TRADEMARK DEPARTMENT 410 SWING ROAD GREENSBORO, NC 27409			PRYOR, ALTON NATHANIEL	
ART UNIT	PAPER NUMBER			
		1616		
NOTIFICATION DATE	DELIVERY MODE			
07/08/2009	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/517,732	NABORS ET AL.
	<b>Examiner</b> ALTON N. PRYOR	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 April 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4,9,11-16,18-25 and 41 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,9,11-16,18-25 and 41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's arguments filed 4/1/09 have been fully considered but they are not persuasive. See discussion below.

Previous rejections and/or objections not addressed below have been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,2,4,9,11-16,18-25 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agbaje et al. (USAN 2003/0096708; 5/22/03) and The Agrochemical Handbook, 3<sup>rd</sup> Edition, A0278/Aug 91. Agbaje et al. teach a composition comprising glyphosate or salt thereof (abstract, paragraph 120). Agbaje et al. teach that the composition can further comprise metolachlor (S-metolachlor) and excipients such as safeners and Isopar (isoparaffinic hydrocarbons). See paragraphs 107-109,147 and 165. Agbaje et al. teach a method of applying the composition to soil in order to control undesirable plant growth in crops (see paragraphs 120, 127 and 149). Agbaje et al. teach that the composition can be applied to almost any crop (paragraph 120). Agbaje et al. do not exemplify a composition comprising glyphosate or salt thereof, metolachlor, Isopar and a safener such as benoxacor. Agbaje et al. do not teach a method of applying the composition to the crops listed in claim 19. It would have been obvious to

one having ordinary skill in the art to arrive at an invention comprising glyphosate or salt thereof, metolachlor, Isopar and benoxacor as the safener. One would have been motivated do to this since Agbaje et al. suggest this combination of ingredients. Agbaje et al. broadly teach the inclusion of a herbicidal safener as part of the invention which would make the inclusion of any safener, including the instant benoxacor safener, obvious. It would have been obvious to apply the compositions taught in Agbaje et al. to all crop types since Agbaje et al. teach said application in paragraph 120. In addition, The Agrochemical Handbook teaches that metolachlor can be used on maize and cotton crops to control weeds (see reference). The Agrochemical Handbook makes it obvious to modify the method of Agbaje et al. to arrive at instant method which involves the application of the composition onto cotton and maize crops.

*Response to Applicants' argument*

Applicants argue that Agbaje teaches a composition comprising glyphosate, diamines or other polyamines and ether amine surfactants and optionally one or more water-insoluble herbicides such as metolachlor or S-metolachlor. Metolachlor and S-metolachlor are in a long list of herbicides of the Agbaje reference. Agbaje discloses numerous excipients in the compositions of the Examples including Isopar M (parafin). The Examiner argues that Agbaje does not have to exemplify all of the possible composition scenarios in order to render the instant invention obvious. The mere fact the Agbaje suggests the combination of metolachlor or S-metolachlor with Isopar M makes the instant invention obvious.

Agbaje does not lead to the preparation of a composition comprising metolachlor or S-metolachlor with a synergistically effective amount of lipophilic additive comprising stearic acid, stearyl alcohol or hydrocarbon fluids containing greater than 50% parafins. The Examiner argues that Applicants provide no synergistic results for the combination of metolachlor or S-metolachlor with stearic acid, stearyl alcohol or hydrocarbon fluids containing greater than 50% Parafins absent benoxacor.

Claims 1,2,4,9,11-14,16,18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie et al. (USAN 6093680; 7/25/00) and The Agrochemical Handbook, 3<sup>rd</sup> Edition, A0278/Aug 91. Gillespie et al. suggest a composition comprising exogenous chemicals such as metolachlor and an additional herbicide plus excipients such as Isopar V or isoparaffinic oil (column 22 line 36 – column 23 line 43 ) which can be applied to crop (abstract, column 9 line 4 - column 10 line 14, claims 1, 10-15). Gillespie et al. teach that the composition can be applied to almost any crop (column 11 lines 45-60). Gillespie et al. do not exemplify a composition comprising S-metolachlor and Isopar V. Gillespie et al. do not teach a method of applying the composition to the crops listed in claim 19. It would have been obvious to employ any isomer of metolachlor and expect a similar outcome. In the absence of unexpected results, isomers would have been expected to yield similar results because isomers are very similar in structure. It would have been obvious to one having ordinary skill in the art to arrive at an invention comprising metolachlor and Isopar V. One would have been motivated do to this since Gillespie et al. suggest the combination of ingredients. It would have been obvious to apply the compositions taught in Gillespie et al. to all crop

types since Gillespie et al. teach said application at column 11 lines 45-60. In addition, The Agrochemical Handbook teaches that metolachlor can be used on maize and cotton crops to control weeds (see reference). The Agrochemical Handbook makes it obvious to modify the method of Gillespie et al. to arrive at instant method which involves the application of the composition onto cotton and maize crops.

*Response to Applicants' argument*

Applicants argue that Gillespie teaches a composition comprising exogenous chemical, a fatty acid ester and an amphilic substance. Isopar is only used in Example 12. No examples employ metolachlor or S-metolachlor. The Examiner argues that Gillespie does not have to exemplify all of the possible composition scenarios in order to render the instant invention obvious. The mere fact the Gillespie suggests the combination of metolachlor or S-metolachlor with Isopar makes the instant invention obvious.

Gillespie does not lead to the preparation of a composition comprising metolachlor or S-metolachlor with a synergistically effective amount of lipophilic additive comprising stearic acid, stearyl alcohol or hydrocarbon fluids containing greater than 50% parafins. The Examiner argues that Applicants provide no synergistic results for the combination of metolachlor or S-metolachlor with stearic acid, stearyl alcohol or hydrocarbon fluids containing greater than 50% Parafins absent benoxacor.

Note the prior art used in both 103(a) rejections do not teach the instant amounts and ratios of ingredients. However, an artisan would have been motivated to determine

the optimum amounts and ratios of ingredients. One would have been motivated to do this in order to make a herbicidal composition that would have been effective at controlling weeds without destroying crops.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616